IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 1651 of 2006

1.Smt.Ramabai Wamanrao Wagh
since deceased through
L.Rs's and others ..Petitioners

vs.

1. Smt.Laxmibai Ramji
since deceased and ors. ..Respondents

Shri V.A.Gangal i/b Shri a.T.Ghade for petitioners.
Shri Bharat Mehta i/b Shri Habibl J.Balsania for respondents.

CORAM: S.B.MHASE J.
22nd March, 2006

P.C.

1. Heard the learned Counsel for the parties.

2. The order dated 1st February, 2006 passed by the Appellate Bench of Small Causes Court at Mumbai in Appeal No.715 of 2005 in Misc.Notice No.488 of 2005 in R.A.E.suit No.4549 of 1964 is under challenge. The petitioners are the judgment debtor in R.A.E.suit No.4549 of 1964. It was a suit filed by original Laxmibai Ramji and Kalyanji Ramaji against the petitioners for eviction. The said suit was dismissed. As against the dismissal of the suit the appeal was preferred and the appeal was allowed on 7th November, 1979 and decree of eviction was passed by the

Appellate Court. The said decree was challenged before this Court and by order dated 13th November, 1986 this Court set aside the Appellate Court's order and dismissed the suit. However, the matter was taken before the Supreme Court in S.L.P.being Appeal No.3657 of 1989 and the Supreme Court by its decree dated 5th October, 1994 restored the decree of eviction passed on 7th November, 1979. The said decree is put in execution and is obstructed by the present petitioners. The objection is that original plaintiff no.1 has expired on 18th November,1991 and another plaintiff no.2 has expired on 3rd September, 1995 i.e. after passing of the decree by the Apex Court and, therefore, unless succession certificate is obtained the execution cannot proceed. The objection is not sustainable in law because the present applicants have been brought on record as the successors-in-interest or representative-in-interest before the Supreme Court and they have been shown as appellant nos.3, 4, 5 and 6 in the decree of the Supreme Court. All this has been rightly considered by the Appellate Bench in the impugned order. No interference is, therefore, called for. Petition is rejected.

3. At this stage Shri Gangal learned Counsel submitted that time may be granted to vacate the premises. Learned Counsel for the respondents opposed for granting such time. He ultimately submitted that 3 months time may be granted. Shri Gangal tried to persuade this Court to grant time for one year. Looking to the fact that the litigation is pending for years together and if possession is peacefully surrendered it is likely to come to an end, this Court finds the period of six months as proper period for surrendering the premises to the respondent. However, that too on certain conditions which are as under:

A) Six months time is granted to vacate the premises on the following conditions:

i) The arrears and dues including the cost of the litigation as directed by the Court in the decree shall be deposited by the petitioner within a period of one week in the Trial Court.

ii) That within a period of one week from today the petitioners shall file an undertaking to this Court that at the end of a

period of six months possession of the suit premises will be peacefully handed over to the respondent without creating any encumberances and/or third party interest in the suit premises. If undertaking is not filed within one week from today, time granted to the petitioners to vacate the premises will not be available and decree will become enforceable at once.

(S.B.MHASE J.)